

RSA No. 4089 of 2019 (O&M)

Jag Mohan deceased through LRs

....Appellants

VS

Man Mohan deceased through LRs

....Respondents

RSA No. 4689 of 2019 (O&M)

Jag Mohan deceased through LRs

....Appellants

VS

Sunita Dhariwal and others

....Respondents

RSA No. 5817 of 2019 (O&M)

Jag Mohan deceased through LRs

....Appellants

VS

Sunita Dhariwal and others

....Respondents

Date of Decision: 23.02.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

**Present:- Mr. P.S. Dhaliwal, Advocate
for the appellants**

SUDHIR MITTAL, J. (Oral)

**CM No. 13379-C-2019 in
RSA-4689-2019**

**This application has been filed for condonation of delay of 65 days in
filing the appeal.**

For the reasons stated in application, the same is allowed and delay of

CM-13380-C-2019 in
RSA-4689-2019

This application has been filed for making up deficiency of Court Fees.

Application is allowed. The applicant is permitted to make up the deficiency of Court Fees.

CM-16713-C-2019 in
RSA-5817-2019

This application has been filed for making up deficiency of Court Fees.

Application is allowed. The applicant is permitted to make up the deficiency of Court Fees.

RSA Nos. 4089, 4689 and 5817 of 2019

The plaintiff is the appellant. He had filed a suit for declaration that he was a co-sharer in the property left by his father and that Will dated 29.08.2008 set up by the defendants was a forged and fabricated document. The consequential relief of permanent injunction was also sought. The trial Court decreed the suit in part. It held that the plaintiff-appellant was co-owner to the extent of 1/5th share as the Will dated 29.08.2008 was not a legal and valid document being surrounded by suspicion. Certain consent decrees i.e. Exb. D-8, D-10 and D-11 executed by the deceased in favour of some of the defendants were, however, upheld and the property which was subject matter of the said consent decrees was excluded from the Will. Aggrieved, the plaintiff as well as some of the defendants preferred three separate appeals. The appellate Court has dismissed the appeal of the plaintiff and has accepted the appeals of the defendants.

Learned counsel for the appellant has submitted that the appellate Court was in error in reversing the well reasoned judgment of the trial Court. The

Will dated 29.08.2008 was surrounded by suspicion as although the testator was a resident of Gohana, it had been registered at Ballabgarh and it included properties transferred through the consent decrees about two decades earlier. The testator was a Lawyer and would not have made such a mistake. The Will was not proved in accordance with law as the second attesting witness had not signed the same in the presence of other attesting witness.

The arguments can not be accepted. Merely because the testator was a practicing Advocate at Gohana but got the Will registered at Ballabgarh does not make it suspicious. The factum of inclusion of properties in the Will which were transferred earlier through consent decrees also does not raise any suspicion. Admittedly, the said consent decrees were not registered and, thus, being a Lawyer the testator realized that he was still the owner thereof. The argument that the second attesting witness did not sign the Will in the presence of the first attesting witness is based upon some observations made by the appellate Court which appears to be on account use of incorrect language. Learned counsel for the appellant was asked to read the cross-examination of the said attesting witness but he did not do so and, thus, it is evident that there was no contradiction in the statement of the said witness.

The reasons given by the appellate Court are reasonable and cogent and do not call for any interference. The Regular Second Appeals have no merit and are dismissed.

A photocopy of this order be placed on the files of other connected cases.

23.02.2022

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**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No